



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

January 13, 1964

Mr. Frank M. Jackson
Executive Secretary
Teacher Retirement System of Texas
201 East 14th Street
Austin 14, Texas

Opinion No. C-202

Re: Whether benefits under
the Teacher Retirement
System Act, as
amended in 1955, are
subject to inheritance
tax.

Dear Mr. Jackson:

We have received your letter from which we quote as follows:

"The Inheritance Tax Division of the Office of the State Comptroller of Public Accounts has asserted a claim against Gertrude A. Herm for State Inheritance Tax on the value of an annuity payable to her by the Teacher Retirement System of Texas. She is receiving this annuity as the sister and nominee of Hattie L. Herm, a deceased member of the Teacher Retirement System. Miss Hattie L. Herm taught in the public schools of Texas for 43 years, deposited \$4,986.25 to her account in the Teacher Retirement System and named Gertude A. Herm to receive any payments which after her death might be due under the terms of the Teacher Retirement Law of the State of Texas. The Comptroller has set a value of \$13,190.20 on this annuity. Miss Hattie L. Herm died July 29, 1962.

"Since the enactment of the first Teacher Retirement System act in 1937, the statute has carried the following provision, in substance:

"The right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the moneys in the various funds created by this Act, are hereby exempt from any State or municipal tax, and

exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this act specifically provided."

You call attention to Opinion No. WW-92, dated October 17, 1957, by this office, which held that the above quoted provision of the 1937 Act is of no effect since the caption of the Act did not carry a notice of the above exemption from inheritance taxes. You also state that the Board of Trustees of the Teacher Retirement System requests that we reconsider said opinion, especially in the light of two acts of 1955 and 1963.

We believe that said Opinion No. WW-92 has no effect on such benefits accruing on or after November 6, 1956 for the reasons hereinafter stated.

Chapter 530, page 1638 of the Acts of the Regular Session of the 54th Legislature, 1955 (V.C.S. Art. 2922-1) amended the Teacher Retirement System Act of 1937 and had a caption reading as follows:

"An Act amending Chapter 470, Acts of the Regular Session of the 45th Legislature (as heretofore amended) pertaining to the Teacher Retirement System of Texas; prescribing the conditions upon which this Act shall become effective as a law; declaring the Act to be severable; and declaring an emergency."

Section 9 of the original Act of 1937 above quoted from your letter was made Section 16 of the Act of 1955 in identical language of the exemption set out in the Act of 1937. Since the Act of 1955 amends the Act of 1937, the caption of the 1955 Act above quoted is sufficient. State v. McCracken, 42 Tex. 383 (1875) and Gunter v. Texas Land Mtg. Co. Ltd., 82 Tex. 496, 17 S.W. 840 (1891).

The case of English & Scottish American Mortg. & Inv. Co. v. Hardy, 93 Tex. 289, 55 S.W. 169 (1900) is directly in point and is decisive on the question of the sufficiency of the caption of the 1955 amendment. In 1897 the Legislature passed an act entitled "An act to amend Articles 641 and 642, Chapter 2, title 21, of the Revised Civil Statutes of Texas relating to the creation of corporations." (Emphasis ours). The body of the act, in addition to matters relating to the creation of corporations, in its last proviso, read as follows:

". . . that foreign corporations obtaining permits to do business in this state shall

show to the satisfaction of the secretary of state that fifty per cent of their authorized capital stock has been subscribed, and that at least ten per cent of the authorized capital has been paid in, before such permit is issued."

The Court stated:

"The contention of plaintiff is that the last proviso, relating to permits to foreign corporations, is not embraced within the subject named in the title to the act. If we could disregard the reference in the title to the number of the article of the Revised Statutes to be amended, and look alone to the words 'relating to the creation of private corporations,' as expressing the whole subject of the act, it may be true that such expression would not be broad enough to admit provisions concerning the issuance of permits to foreign corporations. This it is unnecessary to decide, since, in view of the previous decisions in this and other courts, and of the course of legislation based upon their authority, it must be held that such a reference to the number of an article in a code, such as our Revised Statutes, is sufficient, in the title of an act amendatory thereof, to allow any amendment germane to the subject treated in the article referred to. *Gunter v. Mortgage Co.*, 82 Tex. 502, 17 S.W. 840; *State v. McCracken*, 42 Tex. 384. Many decisions from other states to the same effect might be cited. The reason for the decisions holding this proposition must be that the naming of the article to be amended directs attention to all of the provisions therein, as the subject of the amending act, and that such provisions can be ascertained by reading the article to be amended. However questionable may be the practice, and the decisions by which it has been recognized as valid, it has been so long and so often followed that this court would not be justified in now holding it to be a violation of the constitution. The effect of the reference to the article to be amended is not restricted by other language of the title to the act in question. Such other language is, as far as it goes, properly descriptive of the subject of the amended as well as of the

amendatory act. It simply does not cover the whole of the subject; but the reference to the number of the article to be amended does include, as the subject of the amendatory act, the whole subject embraced by the provisions of the former. It is that article which the title proposes to amend, and not merely such parts of it as relate to the creation of corporations. . ."

The Texas Supreme Court cited the above case with approval in Board of Water Engineers v. City of San Antonio, 155 Tex. 111, 283 S.W.2d 722 (1955).

This 1955 amendment in unequivocal language states that the teacher's annuities, retirement allowances, et cetera, "are hereby exempt from any state or municipal tax." The inheritance tax is a state tax.

You are therefore advised that since the effective date of the 1955 amendment of the Teacher's Retirement System, that the right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the monies in the various funds created by this Act are exempt from state and municipal taxes, including the State Inheritance tax.

The Act of 1955 provides that said amendment shall become effective on November 6, 1956, and for that reason we say that Opinion No. WW-92 is not effective as applied to benefits under said Retirement Act accruing since said date.

S U M M A R Y

Since the effective date of the 1955 amendment of the Teacher's Retirement System, the right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the

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monies in the various funds created by this Act are exempt from state and municipal taxes, including the State Inheritance Tax.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By


H. Grady Chandler
Assistant

HGC/jp

APPROVED:

OPINION COMMITTEE:
W. V. Geppert, Chairman

John Reeves
Albert P. Jones
Linward Shivers
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APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone